IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8682 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKESH SHASHIKANT GAJJAR & 4 - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR NIRAV C THAKKAR for Petitioner No(s).: 1,2,3,4,5.

MR ND GOHIL, Ld. APP for Respondent No(s).: 1.

MR SHAKEEL A QURESHI for Respondent No(s).: 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 16/08/2005

ORAL JUDGMENT

1.Rule. Mr.A. Qureshi, learned Counsel for Mr.Shakeel Qureshi for the original complainant waives service of Rule and Mr.Gohil, learned APP wavies service of Rule on behalf of the respondent State. With the consent of the parties, the matter is taken up for final hearing

today.

2. The petitioners have preferred this petition for quashing of the complaint vide C.R. No.I-472 of 2004 of Pradyuman Nagar Police Station, Rajkot for the offence under Section 498A, 506(2) of IPC and others.

3. At the outset, the learned Counsel appearing for the petitioners and for the original complainant have declared before the Court that pending the petition the deed of divorce is entered into between the husband and the wife and as per the deed of divorce, the amount of Rs.5 lac is paid by the husband to the wife by demand draft and the matter is settled outside the Court in pursuance of the said deed. It has been further stated by the learned Counsel appearing for the parties that the criminal complaint which is filed is to be unconditionally withdrawn. A copy of the said deed of divorce is placed on record. In addition to the above, the xerox copy of affidavit is also filed by the original complainant, Kiranben w/o Mukesh Shashikant Gajjar. Mr.Thakkar, learned Counsel for the petitioners states that the original affidavit shall be filed with this Court within a period of 10 days from today.

4. Mr.Qureshi, learned Counsel appearing for the original complainant also confirms the said position and he

submits that his client has no objection if the complaint is quashed by this Court. Mr.Qureshi, learned Counsel for the original complainant also states that the settlement is arrived at and the amount of Rs.50,000/- which is deposited by the petitioners with this Court in pursuance of the order dated 15.7.2005 may be returned to the original petitioners since the wife – original complainant has already received the full amount as per the settlement of Rs.5 lac.

5. The Ld. Counsel Mr.Thakkar has relied upon the decision of the Apex Court in the matter of ***B.S.Joshi vs State of Haryana and others reported in (2003)4 SCC 675*** for contending that if the matrimonial matter is settled, the court may encourage the genuine settlement of matrimonial dispute and may quash the complaint.

6. As such, after the aforesaid settlement, with a view to ascertain the genuineness of settlement by the original complainant under her free will, the original complainant was asked to file affidavit and the same is filed as referred to hereinabove. The original complainant has stated in the affidavit that she is not desirous to prosecute the complaint and she has no objection if the complaint is quashed as per the settlement.

7. In view of the aforesaid situation and more

particularly in view of the decision of the Apex Court in the matter of ***B.S.Joshi vs State of Haryana and others*** (supra) no further discussion is required and suffice it to say that as the present case is a matrimonial matter and the complaint was for the offence under section 498A, 506(2), 114 of IPC etc., and the parties have not only settled the matter but the complainant has also no objection if the complaint is quashed, I find that if this court exercising its powers under section 482 Cr.P.C quashes the complaint with a view to see that the parties may not be required to face the criminal trial or even the investigation by the police in connection with the complaint the same would be in the interest of justice. Hence, the complaint vide CR No.I-472/2004 registered with Pardyuman Nagar Police Station, Rajkot is quashed. The amount of Rs.50,000/- deposited by the petitioners shall be returned to the petitioners by Office. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

16.8.2005 **(Jayant Patel, J.)**

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